



Appellant-defendant Anthony C. Renshaw appeals the thirty-five year sentence that was imposed following his conviction for Dealing in Methamphetamine,<sup>1</sup> a class A felony. Specifically, Renshaw argues that the sentence was inappropriate in light of the nature of the offense and his character. Finding no error, we affirm the judgment of the trial court.

### FACTS

On February 21, 2005, Renshaw sold 14.29 grams of methamphetamine to an undercover police officer in exchange for the officer's promise to provide Renshaw with a quantity of anhydrous ammonia at some time in the future. As a result of this incident, the State charged Renshaw with one count of dealing in methamphetamine, a class A felony, on March 29, 2005.

On February 23, 2006, Renshaw entered into a plea agreement, where the State agreed to recommend a cap of thirty-five years on executed time, which was to be served consecutively to charges that were pending in Brown County in an unrelated matter. The trial court accepted the plea, and a sentencing hearing was held on April 24, 2005. The trial court identified several aggravating factors, including Renshaw's criminal history, the fact that he had committed the instant crime while he was on bond for a similar offense, and the quantity of methamphetamine that he had sold to the undercover officer. The trial court also identified several mitigating factors, including Renshaw's cooperation with the investigation, his decision to plead guilty, and his employment history. The trial court found that the aggravating circumstances of Renshaw's criminal history and the nature of the offense were equal in weight to the mitigating factors; however, the trial court determined that an

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<sup>1</sup> Ind. Code § 35-48-4-1.

enhanced sentence was appropriate because Renshaw had committed the offense while on bond for a similar offense. As a result, Renshaw was sentenced to an executed term of thirty-five years with five of those years suspended to probation.

On June 8, 2006, Renshaw filed a motion for permission to file a belated notice of appeal that was granted on June 13, 2006. He now appeals.

### DISCUSSION AND DECISION

In determining whether Renshaw was properly sentenced, we initially observe that Indiana's sentencing scheme was amended effective April 25, 2005, to incorporate advisory sentences rather than presumptive sentences and comply with the holdings in Blakely v. Washington, 542 U.S. 296 (2004), and Smylie v. State, 823 N.E.2d 679 (Ind. 2005). See Ind. Code §§ 35-38-1-7.1, 35-50-2-1.3. In this case, the State alleged that Renshaw committed the instant offense before this statute took effect but was sentenced after the effective date. Under these circumstances, a split of authority exists on this court as to whether the advisory or presumptive sentencing scheme should apply. Compare Walsman v. State, 855 N.E.2d 645, 649-52 (Ind. Ct. App. 2006) (sentencing statute in effect at the time of the offense, rather than at the time of the conviction or sentencing, controls) with Samaniego-Hernandez v. State, 839 N.E.2d 798, 805 (Ind. Ct. App. 2005) (concluding that change from presumptive sentences to advisory sentences is procedural rather than substantive and, therefore, application of the advisory sentencing scheme is proper when defendant is sentenced after effective date of amendment even though he committed the crime prior to the amendment date).

While our Supreme Court has not explicitly ruled which sentencing scheme applies in these situations, a recent decision seems to indicate the date of sentencing to be critical. Prickett v. State, 856 N.E.2d 1203 (Ind. 2006). The defendant in Prickett committed the crimes and was sentenced before the amendment date. In a footnote, our Supreme Court stated that “[w]e apply the version of the statute in effect at the time of Prickett’s sentence and thus refer to his ‘presumptive’ sentence, rather than an ‘advisory’ sentence.” Id. at \*3 n.3 (emphasis added). Inasmuch as Renshaw was sentenced on April 24, 2006, we will apply the provisions of the amended statute. That said, Indiana Code section 35-50-2-4 provides that a person who commits a Class A felony shall be imprisoned for a fixed term of between twenty (20) and fifty (50) years, with the advisory sentence being thirty (30) years.

Under the new sentencing statutes, if a trial court chooses to impose a sentence greater than the advisory term, it is not required to make findings as to the existence of mitigating or aggravating factors. If it does identify aggravators and/or mitigators, however, the trial court must simply state its reasons on the record for choosing the particular sentence that departs from the advisory term. I.C. § 35-38-1-3(3).

We also note that when the new sentencing scheme is applied, a defendant may no longer claim that a trial court abused its discretion under statutory guidelines in imposing the sentence. Because we can no longer reverse a sentence for the reason that a trial court improperly found and/or weighed aggravating and mitigating circumstances, our review is now confined to an analysis under Indiana Appellate Rule 7(B): “The Court may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the

Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” We also observe, however, that we are entitled to consider, among other things, aggravating and mitigating factors found—or not found—by the trial court as we conduct a Rule 7(B) review. See, e.g., Prowell v. State, 787 N.E.2d 997, 1005 (Ind. Ct. App. 2003) (considering statutory aggravators and mitigators as part of an analysis of the character of the offender); Martin v. State, 784 N.E.2d 997, 1013 (Ind. Ct. App. 2003) (same).

As for the nature of the offense, Renshaw was convicted of dealing 14.29 grams of methamphetamine, which is a quantity nearly five times greater than the amount necessary to elevate the offense to a class A felony. See Ind. Code § 35-48-4-1. The trial court stated at the sentencing hearing that it could not recall a dealing offense with such a large amount of methamphetamine in the past eighteen years. Tr. p. 21. Hence, we agree with the trial court that such a large quantity of drugs that Renshaw sold is a significant consideration in analyzing the appropriateness of a sentence for this offense. We also agree with the trial court’s determination that the five-year enhancement of the advisory sentence that was suspended with probation was appropriate when considering the nature of the offense.

As for Renshaw’s character, the record shows that his prior criminal convictions consisted primarily of misdemeanor offenses. P.S.I.R. at 3. Nonetheless, those convictions reflect poorly on his character and reveal his inability to conform his behavior to the law. See Bryant v. State, 841 N.E.2d 1154, 1156 (Ind. 2006) (holding that the significance of a criminal history can vary depending upon the number and nature of the prior convictions).

Moreover, three of Renshaw's convictions involving alcohol or drugs are significant, inasmuch as the instant offense is for drug dealing. The record also reflects that Renshaw was charged with dealing in a narcotic drug in April 2004, and he pleaded guilty to that offense in December 2005. That offense is particularly significant because Renshaw committed the instant offense while he was on bond for the prior drug dealing offense.

Additionally, the evidence showed that Renshaw continued his drug and alcohol abuse over the years and did not seek treatment, even though he had been evaluated for substance abuse and was ordered to follow various recommendations for his addictions. Tr. p. 47. Renshaw also offered to use his skills as a welder to assist others in the manufacture of methamphetamine on numerous occasions. Tr. p. 33-35, 48-49.

In light of these circumstances, we agree with the trial court's determination that a minimal sentence would not deter Rehshaw's criminal behavior and drug usage in light of his criminal history, the quantity of drugs that he sold in this instance, his commission of the instant offense while on bond for a prior drug dealing offense, and the years of continued drug use. As a result, we conclude that the sentence imposed was appropriate when considering the nature of the offense and Renshaw's character.<sup>2</sup>

The judgment of the trial court is affirmed.

DARDEN, J., and ROBB, J., concur.

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<sup>2</sup> Even if we decided this case under the prior sentencing scheme, we would nonetheless deem Renshaw's sentence appropriate in light of his criminal history which is exempt from Blakely concerns. See Stott v. State, 822 N.E.2d 176, 179 (Ind. Ct. App. 2005) (holding that an enhanced sentence may be imposed solely on the basis of a defendant's prior criminal history), trans. denied.